

JURT OF THE STATE OF NEW YORK
NEW YORK : CIVIL TERM 27

LTD.,
Plaintiff,
against - INDEX NUMBER:
113339/01

ANDERBILT TRADEMARK, B.V.,
ANDERBILT APPAREL, INC.,
TRADEMARK INVESTMENT, LTD.,

Defendants.

60 Centre Street
New York, New York
May 3, 2002

HONORABLE IRA GAMMERMAN, Justice.

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MARGARET BAUMANN
Official Court Reporter

1 conversations?

2 A The basic substance was really discussion relating to
3 the value of the trademark, positioning of the trademark, how
4 we could -- how the trademark will do in the stores.
5 Basically, it's talking about talking up the trademark and
6 how we can be able to get, you know, more royalties from
7 them.

8 Q And did you have any discussions with anyone at
9 Gloria Vanderbilt Trademark, B.V. about the license agreement
10 with Hudson Bay prior to the time that that agreement was
11 executed?

12 A Yes.

13 Q And could you tell us who, who did you speak with
14 about that at Gloria Vanderbilt Trademark, B.V.?

15 A Again, it was years ago, so I don't recall the
16 specifics of the discussion, but I would have discussed it
17 with Henk Keilman who is basically -- you know, owns and
18 manages GVBV.

19 Q And did he agree to the terms of the license
20 agreement between Hudson Bay Company and Gloria Vanderbilt,
21 B.V.?

22 A He was ecstatic of the minimums and royalty we were
23 anticipating in getting since, prior we were trying to do
24 business in Canada for many years, we were never able to get
25 such a big license. So, such big minimums out of a Canadian

<p>1 is more, Judge, than just an argument based on --</p> <p>2 THE COURT: I would say, counselor, that's what</p> <p>3 you have to concentrate on in your post trial argument</p> <p>4 because you really have to change my mind.</p> <p>5 My initial impression here is that this is a</p> <p>6 scheme cleverly thought of, and unfortunate from the</p> <p>7 defendants' point of view, discovered by the plaintiff,</p> <p>8 perhaps, quite accidentally, to deny to the plaintiff a</p> <p>9 royalty or a portion of the royalty to which it is</p> <p>10 entitled, and you are going to have a problem convincing</p> <p>11 me of the opposite.</p> <p>12 But, let's talk about some practical matters.</p> <p>13 MR. GRUSKIN: Your Honor, just one --</p> <p>14 THE COURT: Yes.</p> <p>15 MR. GRUSKIN: On what you just said, the issue</p> <p>16 that you'd like us to focus in on is whether the</p> <p>17 definition of buyer includes?</p> <p>18 THE COURT: Whether or not it was the intention</p> <p>19 of the parties that merely by assigning, from merely by</p> <p>20 assigning to BV, the defendants can avoid the impact of</p> <p>21 this language.</p> <p>22 MS. FRIEMAN: But, your Honor.</p> <p>23 THE COURT: That's really your argument.</p> <p>24 MR. GRUSKIN: But even if that was irrelevant,</p> <p>25 even if the transfer was conceded by everyone to be an</p>	Page 352	Page 354
<p>1 appropriate proper legal arm's length transaction, the</p> <p>2 Court is still viewing GTI as a buyer, am I correct?</p> <p>3 THE COURT: It has nothing to do with the bona</p> <p>4 fides of the transfer.</p> <p>5 MR. GRUSKIN: That's what I mean.</p> <p>6 THE COURT: Because it seems to me that the</p> <p>7 intention of the parties was to prevent what is happening</p> <p>8 here from happening, and that the mere transfer of the</p> <p>9 copyright or the trademark from one company to another,</p> <p>10 even if it's a legitimate transfer, and even if the Dubah</p> <p>11 family has no interest at all in the Dutch company -- and</p> <p>12 I am interested in the fact -- I guess the principal</p> <p>13 operating officer of the Dutch company never appeared for</p> <p>14 his deposition? If you had made a motion, I would have</p> <p>15 made a judgment against that. Just a moment.</p> <p>16 If you had made a motion based on that failure I</p> <p>17 would have granted that motion and judgment against the</p> <p>18 company.</p> <p>19 MR. GRUSKIN: Your Honor.</p> <p>20 THE COURT: Just a minute.</p> <p>21 MR. HALL: Your Honor, I did send a letter,</p> <p>22 third week of April, asking for that relief.</p> <p>23 MR. GRUSKIN: And, we had a conference with Ms.</p> <p>24 Giles of your chambers, and we dealt with that.</p> <p>25 THE COURT: In any event, in any event, it does</p>	Page 353	Page 355
<p>1 --let me say this to you, it does raise some questions</p> <p>2 in my mind, but that's not the basis of my ruling or my</p> <p>3 thoughts. I have not ruled yet.</p> <p>4 It seems to me that that transfer doesn't change</p> <p>5 anything, and that everyone on this list is the buyer, and</p> <p>6 that the transferor remains liable for the payments and</p> <p>7 remains liable under the definition of buyer, and you will</p> <p>8 have to argue otherwise in the papers you submit.</p> <p>9 MR. GRUSKIN: I am trying to understand. If the</p> <p>10 service provider, instead of being GVAC, Mr. Gordon's</p> <p>11 could have, the plaintiff's expert in this case --</p> <p>12 THE COURT: I think you would be in much better</p> <p>13 shape.</p> <p>14 MR. GRUSKIN: Okay, because your finding.</p> <p>15 THE COURT: Absolutely.</p> <p>16 MR. GRUSKIN: Okay, I want to be clear on that.</p> <p>17 THE COURT: There is no question about that. I</p> <p>18 don't think we'd have a lawsuit under those</p> <p>19 circumstances.</p> <p>20 And if it was clear that the only amount that</p> <p>21 was being received was the amount of the mark and that</p> <p>22 there was a totally independent third-party unrelated to</p> <p>23 any of the Dubah corporations, including the providing the</p> <p>24 services, we would not be trying this case.</p> <p>25 There is nothing in that agreement, in the '98</p>		